

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)
INDUSTRY RETAIL GROUP, INC. FOR AUTHORITY)
TO PROVIDE LOCAL EXCHANGE)
TELECOMMUNICATIONS SERVICES)
THROUGHOUT THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE04091044

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated September 16, 2004, Industry Retail Group, Inc. ("Petitioner" or "Industry") filed a Petition with the Board of Public Utilities ("Board") requesting authority to provide local exchange telecommunications services throughout the State of New Jersey.

Industry was incorporated under the laws of the State of Delaware on May 7, 2004. Petitioner's principal offices are located at 2831 W. 6th Street, Wilmington, Delaware 19805.

Petitioner submitted copies of its Articles of Incorporation, New Jersey Certificate of Good Standing and its New Jersey Certificate of Authority to operate as a Foreign Corporation. According to the Petition, Industry is not currently providing service.

Petitioner seeks authority to provide local exchange telecommunications services to both business and residential customers on a resale and facilities-basis, Unbundled Network Element Platform ("UNE-P") including, but not limited to:

(A) Local exchange services that will enable customers to originate and terminate local calls in the local calling area served by other local exchange carriers ("LECs"), including local dial tone and custom calling features.

(B) Switched local exchange services such as flat-rated and measure-rated local services, vertical services, Direct Inward and Outward Dialed trunks, carrier access, public and semi-public coin telephone services, and any other switched local services that currently exist or will exist in the future.

(C) Non-switched local services (e.g., private line) that currently exist or will exist in the future.

(D) Centrex or centrex-like services that currently exist or will exist in the future.

(E) Digital subscriber line, ISDN, frame-relay, and other high capacity line services.

(F) Ancillary Services (911, directory listing, directory assistance, etc.).

Petitioner further states there have been no civil or criminal proceedings against Petitioner in any jurisdiction.

Petitioner states that it has no current plans to install facilities in the State of New Jersey for the provision of local exchange service. If Petitioner decides to install such facilities in the future, it will provide voice and high speed data services through a combination of the latest technology switching and transport media comprised of the Lucent Technology 5 ESS Generic switch module, ADSL/SDSL transport and Internet service equipment and the latest Optical multiplexer DAC's configurations. The switching system consists of a central processing and control complex capable of interconnection as a peer to the incumbent as well as competitive local exchange companies. Petitioner says the hub portion of the switch will interconnect with the public switched network, on Signaling System 7 ("SS7") or Feature Group's D ("FGD") facilities. Petitioner's system's remote module capability will allow properties to be served in a manner that provides the exchange of appropriate signaling, control and calling/caller information to the network in accordance with network standards and specifications. Petitioner states that these services will be delivered over a combination of delivery mechanisms through incumbent local carriers' unbundled loop networks, both copper and fiber transport networks, as well as its own constructed facilities. Petitioner will combine switchless resale leasing of local loops, and/or purchasing Unbundled Network Elements ("UNE") from Verizon. Petitioner plans to provide basic telephone exchange services, data services, Internet, digital subscriber line service, access services, and features such as call waiting, call forwarding, speed dialing, distinctive ringing, and three-way calling to business and residential customers. Petitioner will also offer operator services, 911 and E911 service, directory listing, and third party calling arrangements as well as local calling services and per use services such as call return and redial. The toll free number for local customer service is 1-866-525-8529. Petitioner's registered Agent's office is: Michael Luzio, 60 High Pointe Way, Matawan, New Jersey 07747.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3 and N.J.A.C. 14:10 -1.16, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located at 2831 W. 6TH Street, Wilmington, Delaware 19805. Petitioner states, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner states that it has filed a Resale acknowledgement letter to provide interexchange and local services in New Jersey that was accepted for filing on August 8, 2004. By this Petition, Petitioner asserts that expedited approval of its Petition will augment the competitive telecommunications services which it can offer to all New Jersey customers, including an enhanced range of telecommunications services and an increase in consumer choices. Petitioner states approval of this Petition will serve the public interest.

Petitioner states that as shown in the information contained in Exhibit B, it has all of the qualified personnel to provide competitive local exchange services, including accounting, engineering, sales, and all other personnel required for Petitioner to provide services.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner is in compliance with Board's filing requirements to provide telecommunications services in New Jersey.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to "provide diversity in the supply of telecommunications services" and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Industry's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange telecommunications services throughout New Jersey subject to approval of its tariff and submission of pro forma financials for its New Jersey operations. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60, and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and the Division of the Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 the following year.

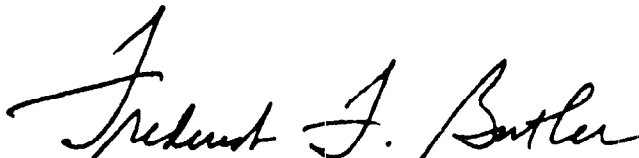
On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

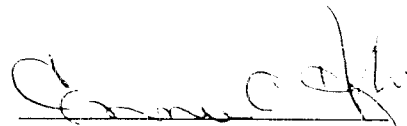
Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 12/23/04

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

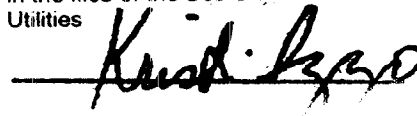

CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF THE PETITION FOR AN ORDER AUTHORIZING
INDUSTRY RETAIL GROUP, INC. TO PROVIDE
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES
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SERVICE LIST

Serial No.	<u>Name and Address</u>	Serial No.	<u>Name and Address</u>
1	Petitioner's Contact Person: Joseph R. Manzari, President Industry Retail Group, Inc. 2831 W. 6 th Street Wilmington, Delaware 19805	4	Board's Staff: Walter Szymanski, Director Division of Audits Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
2	Petitioner's Attorney: Kenneth Saffren, Esq. 1874 East Marlton Pike (Route 70) Suite 3 Cherry Hill, New Jersey 08003	5	Board's Staff: Anthony Centrella, Director Division of Telecommunications Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
3	Ratepayer Advocate: Seema M. Singh, Esq. Acting Director and Ratepayer Advocate Division of Ratepayer Advocate 31 Clinton Street, 11 th Floor P.O. Box 46005 Newark, New Jersey 07101	6	Deputy Attorney General: Alex Moreau Department of Law & Public Safety Division of Law 124 Halsey Street, 5 th floor P.O. Box 45029 Newark, New Jersey 07102